

## REMARKS

This communication is a full and timely response to the Office Action dated October 15, 2008. Claims 1-23 remain pending. By this communication, claims 1, 11, 12, and 23 are amended. Support for the amended subject matter can be variously found in Applicants' disclosure, for example, in Fig. 2.

### **Rejections Under 35 U.S.C. §102**

Claims 1-23 are rejected under 35 U.S.C. § 102(b) for alleged anticipation by *Kozaki* (U.S. Patent Publication No. 2002/00536760). Applicants respectfully traverse this rejection.

Independent claim 1 recites, among other features, an upper electrode formed on the protective layer to contact an upper surface of the ridge through the contact hole, wherein the upper surface of the ridge, which is formed of the buried layer, the protective layer, and the upper material layer, is planar such that the upper electrode is in direct contact with each of the upper material layer, the buried layer, and the protective layer.

Similarly, independent claim 11 recites, in part, etching the portion of the buried layer, which is exposed through the opening of the protective layer, wherein the upper surface of the ridge is planar with an end of the buried layer and an end of the protective layer; and forming an upper electrode that contacts the top surface of the ridge such that the upper electrode is formed on and in direct contact with each of the upper material layer, the buried layer, and the protective layer in the plane.

On page 2 of the Office Action, the Examiner alleges that *Kozaki* discloses the use of two upper electrodes that together contact a contact layer, buried layer, and a

protective layer. While not acquiescing to this position, Applicants have amended claims 1 and 11 to clarify that the upper surface of the ridge, which is planar, is formed of the buried layer, the protective layer, and the upper material layer such that the upper electrode, formed on the upper surface of the ridge, is in direct contact with each of the upper material layer, the buried layer, and the protective layer.

*Kozaki* fails to disclose or suggest at least the aforementioned features. Namely, the upper surface of the ridge disclosed by this reference is covered by a protective layer. The protective layer includes a contact hole that exposes an electrode formed on the ridge. The lead electrode is formed on the protective layer and contacts the ridge electrode. One of ordinary skill would recognize that the layer structure described by *Kozaki* is not analogous to the structure recited in Applicants' claims. Namely, the upper surface of the ridge is not formed of a buried layer, a protective layer and an upper material layer.

The Office is reminded that to properly anticipate a claim, the document must disclose, explicitly or implicitly, each and every feature recited in the claim. See Verdegall Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Based on at least the foregoing reasons, Applicants respectfully request that the rejection to claims 1 and 11 and their corresponding dependent claims be withdrawn.

**Conclusion**

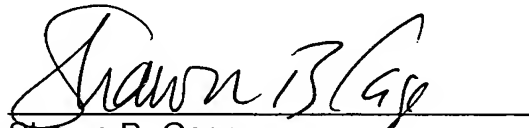
Based on at least the foregoing amendments and remarks, Applicants submit that claims 1-23 are allowable, and this application is in condition for allowance. Accordingly, Applicants request favorable examination and consideration of all pending claims. In the event the instant application can be placed in even better form, Applicants request that the undersigned attorney be contacted at the number below.

Respectfully submitted,

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